



## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2021–0016]

### Request for Comments on Significant Foreign Trade Barriers for the National Trade Estimate Report

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), publishes the National Trade Estimate Report on Foreign Trade Barriers (NTE Report) each year. USTR invites comments to assist it and the TPSC in identifying significant barriers to U.S. exports of goods and services, U.S. foreign direct investment, and the protection and enforcement of intellectual property rights for inclusion in the NTE Report. USTR also will consider responses to this notice as part of the annual review of the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services that are in force with respect to the United States.

**DATES:** October 26, 2021 at midnight EST: Deadline for submission of comments.

**ADDRESSES:** USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov> (Regulations.gov). The instructions for submitting comments are in section IV below. The docket number is USTR–2021–0016. For alternatives to online submissions, please contact Spencer Smith at [Spencer.L.Smith2@ustr.eop.gov](mailto:Spencer.L.Smith2@ustr.eop.gov) or (202) 395-2974 before transmitting a comment and in advance of the deadline.

**FOR FURTHER INFORMATION CONTACT:** Spencer Smith at [Spencer.L.Smith2@ustr.eop.gov](mailto:Spencer.L.Smith2@ustr.eop.gov) or (202) 395-2974.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

Section 181 of the Trade Act of 1974 as amended (19 U.S.C. 2241), requires USTR annually to publish the NTE Report, which sets out an inventory of the most significant foreign barriers affecting U.S. exports of goods and services, including agricultural commodities, U.S. intellectual property, U.S. foreign direct investment by U.S. persons, especially if such investment has implications for trade in goods or services, and U.S. electronic commerce. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers and is a valuable tool in enforcing U.S. trade laws and strengthening the rules-based trading system. You can find the 2021 NTE Report on USTR's website at <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications>. To ensure compliance with the statutory mandate for the NTE Report and the Administration's commitment to focus on the most significant foreign trade barriers, USTR will take comments in response to this notice into account in deciding which restrictions to include in the NTE Report.

## **II. Topics on Which the TPSC Seeks Information**

To assist USTR in preparing the NTE Report, commenters should submit information related to one or more of the following categories of foreign trade barriers:

1. *Import policies.* Examples include tariffs and other import charges, quantitative restrictions, import licensing, pre-shipment inspection, customs barriers and shortcomings in trade facilitation or in valuation practices, and other market access barriers.
2. *Technical barriers to trade.* Examples include unnecessarily trade restrictive or discriminatory standards, conformity assessment procedures, labeling, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products.

3. *Sanitary and phytosanitary measures.* Examples include measures applied to protect food safety, or animal and plant life or health that are unnecessarily trade restrictive, discriminatory, or not based on scientific evidence.
4. *Government procurement restrictions.* Examples include closed bidding and bidding processes that lack transparency.
5. *Intellectual property protection.* Examples include inadequate patent, copyright, and trademark regimes, trade secret theft, and inadequate enforcement of intellectual property rights.
6. *Services.* Examples include prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or standards, local-presence requirements, and unreasonable restrictions on what services may be offered.
7. *Digital trade and electronic commerce.* Examples include barriers to cross-border data flows, including data localization requirements, discriminatory practices affecting trade in digital products, restrictions on the provision of internet-enabled services, and other restrictive technology requirements.
8. *Investment.* Examples include limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties.
9. *Subsidies, especially export subsidies and local content subsidies.* Examples of export subsidies include subsidies contingent upon export performance, and agricultural export subsidies that displace U.S. exports in third country markets. Examples of local content subsidies include subsidies contingent on the purchase or use of domestic rather than imported goods.
10. *Competition.* Examples include government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or

services in the foreign country's markets or abuse of competition laws to inhibit trade; fairness and due process concerns by companies involved in competition investigatory and enforcement proceedings in the country.

11. *State-owned enterprises*. Examples include subsidies to and from industrial state-owned enterprises involved in the manufacture or production of non-agricultural goods or in the provision of services, as well as industrial state-owned enterprises that could contribute to overcapacity, or discriminating against foreign goods or services, acting inconsistently with commercial considerations in the purchase and sale of goods and services in cases in which these policies constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers.
12. *Labor*. Examples include concerns with failures by a government to protect internationally recognized worker rights, including through failures to eliminate forced labor, or failures to eliminate discrimination in respect of employment or occupation, in cases where these failures influence trade flows or investment decisions in ways that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers. Internationally recognized worker rights include the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children, and a prohibition on the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
13. *Environment*. Examples include concerns with a government's levels of environmental protection, unsustainable stewardship of natural resources, and harmful environmental practices that constitute significant barriers to, or distortions

of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers.

14. *Other barriers.* Examples include barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector.

Commenters should submit information related to one or more of the following export markets to be covered in the report: Algeria, Angola, the Arab League, Argentina, Australia, Bahrain, Bangladesh, Bolivia, Brazil, Brunei, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, the European Union, Ghana, Guatemala, Honduras, Hong Kong, India, Indonesia, Israel, Japan, Jordan, Kenya, Korea, Kuwait, Laos, Malaysia, Mexico, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, the Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, and Vietnam.

In addition, section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (Section 1377) requires USTR annually to review the operation and effectiveness of U.S. telecommunications trade agreements that are in force with respect to the United States. The purpose of the review is to determine whether any foreign government that is a party to one of those agreements is failing to comply with that government's obligations or is otherwise denying, within the context of a relevant agreement, "mutually advantageous market opportunities" to U.S. telecommunication products or services suppliers. USTR will consider responses to this notice in the review called for in Section 1377.

Commenters should place particular emphasis on any practices that may violate U.S. trade agreements. USTR also is interested in receiving new or updated information pertinent to the barriers covered in the 2021 NTE Report as well as information on new

barriers. If USTR does not include in the 2022 NTE Report information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

### **III. Estimate of Increase in Exports**

Each comment should include an estimate of the potential increase in U.S. exports, foreign direct investment, or electronic commerce that would result from removing any foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Commenters should express estimates within the following value ranges: less than \$25 million; \$25 million to \$100 million; \$100 million to \$500 million; and over \$500 million.

### **IV. Requirements for Submissions**

Persons submitting written comments must do so in English and must identify on the first page of the submission ‘Comments Regarding Foreign Trade Barriers to U.S. Exports for 2022 Reporting.’ Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate submission for each country.

The submission deadline is Tuesday, October 26, 2021, at midnight EST. USTR strongly encourages commenters to make online submissions, using Regulations.gov. To submit comments via Regulations.gov, enter docket number USTR–2021–0016 on the home page and click ‘search.’ The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ‘comment now.’ For further information on using Regulations.gov, please consult the resources provided on the website by clicking on ‘How to Use Regulations.gov’ on the bottom of the home page.

Regulations.gov allows users to submit comments by filling in a ‘type comment’ field, or by attaching a document using an ‘upload file’ field. USTR prefers that you

provide comments in an attached document. If you attach a document, please identify the name of the country to which the submission pertains in the 'type comment' field, *e.g.*, see attached comments with respect to (name of country). USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

Filers submitting comments containing no business confidential information (BCI) should name their file using the name of the person or entity submitting the comments. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' Clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' on the top of that page. Filers of submissions containing BCI also must submit a public version of their comments that USTR will place in the docket for public inspection. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges that you file submissions through Regulations.gov. You must make any alternative arrangements with Spencer Smith at Spencer.L.Smith2@ustr.eop.gov or (202) 395-2974 before transmitting a comment and in advance of the deadline.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments on the Regulations.gov by entering docket number USTR-2021-0016 in the search field on the home page. General information concerning USTR is available at <https://www.ustr.gov>.

Edward Gresser,  
Chair of the Trade Policy Staff Committee,  
Office of the United States Trade Representative.

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